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A

Shahriar Ghaed Rashid v Public Prosecutor

B COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–52–02 OF 2013
BALIA YUSOF WAHI, ZAKARIA SAM AND UMI KALTHUM JJCA
7 MARCH 2014

C *Criminal Procedure — Appeal — Appeal against conviction and sentence — Accused person found with drugs embedded in luggage at airport — 969.3g of methamphetamine — Charge of drug trafficking under s 39B(1)(a) of the Dangerous Drugs Act 1952 — Defence of innocent carrier — Prosecution's case proven beyond reasonable doubt — Accused person convicted for charge and sentenced to death — Appeal to Court of Appeal against decision of High Court — Whether High Court judge appreciated defence case sufficiently*

D

After observing the passengers' movements at the carousel of the Kuala Lumpur International Airport, PW3 and his police team saw the appellant pushing an airport trolley with two luggage bags, one in blue while the other was silver. A scan on the bags did not reveal anything suspicious but upon further inspection of the silver bag ('P11'), a lump was found at the base. There were also pasting marks and gum on the lump which PW3 removed. Inside was a package wrapped in black carbon paper attached to the base of P11 which contained one transparent plastic package containing crystalised materials later confirmed to be 969.3g of methamphetamine. The appellant was charged in the High Court for trafficking drugs, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'). The appellant's main defence was that of an innocent carrier; it was his fifth trip to Malaysia; and that the purpose was for business, namely to shop for sports car accessories. The appellant contended that his friend ('Hamid'), had given P11 to be delivered to Hamid's family member upon arriving in Malaysia. The main thrust of the appellant's testimony was that Hamid was a real person and that the prosecution had failed to adduce any evidence to disprove his existence. At the end of the prosecution's case, the trial judge held that the prosecution had proven its case beyond reasonable doubt and the appellant was convicted for the charge and sentenced to death. Hence, the present appeal where the appellant brought forth the argument that the trial judge had failed to sufficiently appreciate the defence case.

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Held, dismissing the appeal:

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(1) The prosecution had proven its case beyond reasonable doubt. The trial judge had adequately considered the defence case and there were no merits in the appeal. The conviction of the appellant was safe (see para 27).

(2) There was no misdirection by the trial judge. In any event, there was nothing further that the cautioned statement could have added to the appellant's defence which was not taken into account by the trial judge. Just because the appellant had mentioned about Hamid's role in the cautioned statement, which was made five days after the appellant was arrested, it was not incumbent upon the prosecution to investigate further on the veracity of the existence of Hamid when the appellant had failed to give to the police a clear description/identification of Hamid (see para 23).

(3) The onus on the prosecution to check on whether the appellant's version of the facts as they appeared in his cautioned statement and to which was referred was true or false did not apply here (see para 23).

[Bahasa Malaysia summary

Selepas memerhati pergerakan penumpang-penumpang di karusel Lapangan Terbang Kuala Lumpur, PW3 dan pasukan polis melihat perayu menolak troli lapangan terbang dengan dua bagasi, berwarna biru dan yang lagi satu berwarna perak. Imbasan ke atas beg tersebut tidak menunjukkan apa-apa yang meragukan tetapi setelah siasatan selanjutnya ke atas beg berwarna perak ('P11'), bonjol didapati di bahagian bawah. Juga terdapat tanda-tanda perekat dan gam atas bonjol yang dialihkan oleh PW3. Di dalam terdapat paket yang berbungkus dalam kertas karbon hitam yang melekat kepada bahagian bawah P11 tersebut yang terdapat satu paket plastik lutsinar yang mengandungi material kristal yang kemudianya disahkan 969.3g methamphetamine. Perayu dituduh di Mahkamah Tinggi kerana mengedar dadah, kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952. Pembelaan utama perayu adalah pembawa tidak salah; ia adalah perjalanannya yang kelima ke Malaysia; dan bahawa tujuan adalah untuk perniagaan. Iaitu untuk membeli aksesori kereta sport. Perayu berhujah bahawa kawannya ('Hamid'), telah memberikan P11 untuk dihantar kepada ahli keluarga Hamid apabila sampai di Malaysia. Teras utama keterangan perayu adalah bahawa Hamid adalah orang betul dan bahawa pihak pendakwaan telah gagal untuk mengemukakan apa-apa keterangan untuk menyangkal kewujudannya. Pada akhir kes pendakwaan hakim perbicaraan memutuskan bahawa pihak pendakwaan telah membuktikan kesnya melampaui keraguan munasabah dan perayu disabitkan untuk tuduhan dan dijatuhkan hukuman mati. Maka, rayuan ini di mana perayu mengemukakan hujahan bahawa hakim perbicaraan telah gagal untuk meneliti dengan secukupnya kes pembelaan.

Diputuskan, menolak rayuan:

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(1) Pihak pendakwaan telah membuktikan kesnya melampaui keraguan munasabah. Hakim perbicaraan telah mempertimbangkan secara wajar kes pembelaan dan tidak terdapat merit dalam rayuan. Sabitan perayu adalah selamat (lihat perenggan 27).

(2) Tidak terdapat salah arah oleh hakim perbicaraan. Walau bagaimanapun tidak terdapat apa-apa selanjutnya yang dapat ditambah di dalam pernyataan beramaran untuk pembelaan perayu yang tidak diambil kira oleh hakim perbicaraan. Hanya kerana perayu telah memberitahu mengenai peranan Hamid di dalam pernyataan beramaran, yang dibuat lima hari selepas perayu ditangkap, tidak diwajibkan ke atas pihak pendakwaan untuk menyiasat selanjutnya atas kebenaran kewujudan Hamid apabila perayu gagal untuk memberikan pihak polis penggambaran/pengenalpastian jelas mengenai Hamid (lihat perenggan 23).

(3) Beban ke atas pihak pendakwaan untuk memeriksa sama ada versi perayu terhadap fakta seperti yang dijelaskan di dalam pernyataan beramarannya dan yang mana dirujuk adalah betul atau palsu tidak diguna pakai di sini (lihat perenggan 23).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 288–371.

Cases referred to

Alcontara a/l Ambross Anthony v PP [1996] 1 MLJ 209; [1996] 1 CLJ 705, FC (not folld)
Ng Yiu Kwok And Ors v PP [1989] 3 MLJ 166, SC (refd)
Prasit Punyang v PP [2014] 4 MLJ 282, CA (refd)
PP v Wan Razali Kassim [1970] 2 MLJ 79, FC (refd)
Teng Howe Sing v PP [2009] 3 MLJ 46; [2009] 3 CLJ 733, FC (refd)

Legislation referred to

Criminal Procedure Code s 182A
Dangerous Drugs Act 1952 s 39B(1)(a), (2), First Schedule

Appeal from: Criminal Case No 45A-76 of 2011 (High Court, Shah Alam)

Hisyam Teh Poh Teik (Teh Poh Teik & Co) for the appellant.
V Viknesvaran a/l Purnshatman (Attorney General's Chambers) for the respondent.

Umi Kalthum JCA (delivering judgment of the court):

[1] The appellant was charged for an offence of drug trafficking under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'). The charge reads as

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follows:

> Bahawa kamu pada 19/11/2010 jam lebih kurang 08.10 pagi bertempat di kawasan tempat Tuntutan Bagasi E, Aras 3, Balai Ketibaan, Bangunan Terminal Utama, KLIA di dalam Daerah Sepang, di dalam Negeri Selangor Darul Ehsan, telah mengedar dadah berbahaya iaitu Methamphetamine seberat 969.3 gram, dan dengan itu kamu telah melakukan satu kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952, yang boleh dihukum di bawah Seksyen 39B (2) Akta yang sama.

THE PROSECUTION'S CASE

[2] On 19 November 2010, at about 8.10am, Sarjan Mejar Ghazali bin Md Din (PW3) together with another six of his officers were observing the passengers' movements at Carousel E, Level 3, Arrival Hall at Kuala Lumpur International Airport. PW3 saw the appellant pushing an airport trolley with two luggage bags, one was blue and the other was silver, in the trolley. The appellant carried another sling bag on his shoulder. PW3 then stopped the appellant as he was walking towards the custom's counter and introduced himself as a police officer.

[3] PW3 instructed the appellant to take all his bags to be scanned at the narcotic inspection counter. The scan did not reveal any suspicious image from the three bags. PW3 then directed the appellant to open all three bags and PW3 did a random inspection on them. PW3 found wedding decorations and few clothings in one of the bags. PW3 then instructed the appellant to bring the bags and to follow him to the narcotic's office on the same floor. A body search was conducted by one Corp Rosli on the appellant and he found nothing incriminating. Then PW3, with the help of Corp Rosli and Corp Ghazali, in the presence of the appellant, inspected the two luggage bags. Nothing incriminating was found in the blue luggage bag. PW3 then instructed the appellant to empty the other silver luggage bag with the brand name Echolac ('exh P11'). Upon inspection of P11, PW3 discovered that there was a lump at the base of P11 and it produced cracking sounds (berderap) when it was pressed. PW3 noticed that there were pasting marks and gum at the base of P11 and proceeded to remove the layer at the base of P11. PW3 found one package wrapped in black carbon paper attached to the base of P11. Inside the carbon package there was one transparent plastic package containing crystallised materials suspected to be drugs.

[4] PW3 handed over the appellant and the seized items to PW4, the investigating officer. PW4 subsequently sent the suspected drug exh to PW1 for chemical analysis. PW1's chemist report in exh P4 and her testimony confirmed that the drug found was methaphetamine, a dangerous drug listed in the First Schedule of the Act with a net weight of 969.3g.

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[5] At the end of the prosecution's case, the learned trial judge was satisfied, after having conducted a maximum evaluation of the evidence tendered by the prosecution, that the prosecution was successful in proving a prima facie case against the appellant and called upon the appellant to tender his defence.

THE APPELLANT'S DEFENCE

[6] The appellant chose to give his evidence on oath. Briefly, the appellant's main defence was that he was an 'innocent carrier' of the said drugs. According to the appellant, he came to Malaysia for business, ie to shop for sports car accessories which are cheaper in Malaysia. The appellant explained that this was his fifth trip to Malaysia.

[7] It was the appellant's defence that his friend, by the name of Hamid Rahanjam ('Hamid'), who had given P11 to him to be brought to Malaysia. Hamid was supposed to have travelled to Malaysia together with the appellant but had backed out from the trip three days before the scheduled date of departure due to family commitments. Hamid, however, requested the appellant to bring a box containing wedding decorations to Malaysia, which the appellant agreed to do. Hamid met the appellant at the Emmom Khomeini Airport, Tehran ('Tehran Airport') where Hamid proceeded to hand over P11 to the appellant. At first the appellant refused to carry P11 since he had his own luggage bag to carry. But after much persuasion by Hamid and after inspecting the contents in P11, where the appellant found to contain wedding decorations and some books, the appellant had agreed to carry P11 with him to Malaysia. The appellant was to deliver P11 to a family member of Hamid's in Malaysia who would contact him upon the appellant's arrival in Malaysia.

[8] The main thrust of the appellant's testimony was that Hamid is a real person and that the prosecution had failed to adduce any evidence to disprove the existence of Hamid. The existence of Hamid was proven by exh D21, being a letter written by the appellant's solicitor requesting a background check on Hamid. Further, exh D18, a report lodged by Nosrat Attaran, the appellant's mother, about Hamid at the Inspection Department of the Public and Revolutionary Prosecution Office of Tehran. The appellant also adduced IDD19, IDD20, IDD22, IDD23, IDD24 and IDD25, being documents allegedly issued by the relevant Iranian authorities on Hamid.

[9] At the end of defence case, the learned trial judge held that the prosecution had proven its case beyond reasonable doubt. The appellant was found guilty as charged and sentenced to death as mandated under s 39B(2) of the Act.

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THE APPEAL

[10] Before us, the appellant challenged the decision of the learned trial judge on the ground that the learned trial judge had misdirected himself when His Lordship failed to sufficiently appreciate the defence case. The appellant reiterated the following:

(a) the learned trial judge had unfairly criticised the defence as a 'penafian' 'tidak masuk akal' dan 'diada-adakan';

(b) there was a failure to consider the core of the defence case; and

(c) the learned trial judge failed to consider the cautioned statement of the appellant.

[11] Counsel for the appellant submitted that this was the appellant's fifth trip (even though in his cautioned statement the appellant stated that this trip was his fourth) to Malaysia. The reason for him coming to Malaysia was business, that is, to shop for car accessories as they are cheaper and have better quality compared with in Iran. The appellant described the types of accessories that he was looking for. These included rims, rear cameras and lights, brake pads and linings and car lights. The appellant had no intention to deal with drugs when he was coming to Malaysia. In his testimony the appellant explained that during his fourth visit his friend brought him to shops in Damansara and Puchong. The appellant withstood the cross-examination and it could not be said that the version given by the appellant was unreasonable.

[12] On this aspect, we find the learned trial judge had not erred in making the following findings of facts at p 185 of the appeal record, Vol 3:

> Penilaian terhadap versi pembelaan OKT menunjukkan ianya tidak munasabah dan direka-reka berdasarkan alasan berikut
>
> (a) OKT memberi keterangan bahawa beliau datang ke Malaysia untuk membeli aksesori kereta dan membuat tinjauan harga dan merancang untuk tinggal selama lima (5) hari di Malaysia bagi tujuan tersebut. Walaubagaimanapun semasa ditahan, OKT hanya membawa lebih kurang RM 1,500.00 dalam bentuk pelbagai mata wang;
>
> (b) OKT menyatakan bahawa beliau merancang untuk tinggal di rumah kawannya yang bernama Bahrain semasa beliau berada di Malaysia. Namun tiada bukti untuk menunjukkan kewujudan Bahrain kecuali berdasarkan keterangan OKT sahaja. Nama Bahrain juga tidak timbul di dalam rakaman percakapan OKT, tetapi hanya dibangkitkan semasa perbicaraan di Mahkamah; dan
>
> (c) OKT dalam keterangannya menyatakan bahawa pendapatan beliau sebulan adalah USD1000 dan isteri OKT tidak bekerja. Adalah tidak munasabah dengan pendapatan sebanyak itu OKT mampu untuk

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A menyara keluarga dan pada waktu yang sama datang ke Malaysia beberapa kali dan tinggal selama beberapa hari.

[13] It is trite that the appellate court should be slow in interfering with the findings of facts of the trial judge. We refer to the case of *Public Prosecutor v Wan Razali Kassim* [1970] 2 MLJ 79, where the court held at p 82, paras H-I, left, that:

> An appellate court should be slow to interfere with the finding of fact by a lower court as an appellate court does not have the advantage of seeing and hearing the witnesses and therefore of assessing their credibility.

[14] The learned counsel further submitted that Hamid was a friend of the appellant. Hamid had concealed the drugs in P11 and then packed the bag with, amongst other things, wedding decorations and some books. Hamid requested the appellant to bring P11 to Malaysia to be handed over to a family member here. The appellant testified that he had known Hamid for about two years. Initially Hamid planned to come with the appellant to Malaysia but backed down three days before the appellant left for Malaysia. Hamid requested the appellant to deliver P11 which contained wedding decorations to Malaysia. Hamid had opened P11 at the Tehran Airport and the appellant only saw a few books and wedding decorations. The appellant had no knowledge that the bag Hamid gave him contained drugs, as the drugs were hidden under the false bottom beneath the lining of the bag.

[15] The appellant then corroborated his evidence with a letter from Messrs Teh Poh Teik & Co addressed to the Iranian Embassy and the Emmon Khomeini Airport Police Authority (exh D21), a report lodged by DW3, the mother of the appellant, with the Inspection Department of Public and Revolutionary Prosecution Office of Tehran (exh D18) and documents marked as IDD19, IDD20, IDD22, IDD23, IDD24 and IDD25 which were allegedly issued by the Iranian Public and Revolutionary Prosecution Office on Hamid. It was submitted by the appellant's counsel that these documents have the effect of showing that Hamid is a real person and not a fictitious one and that Hamid is the actual drug trafficker. In this context, it was contended that the learned trial judge had failed to rule on the admission of these documents marked 'IDD' and called upon this court to at least admit IDD20 as 'D20'.

[16] It was also submitted that the learned trial judge had failed to make a finding whether Hamid existed or not and had failed to give any reason as to why he (the learned trial judge) had held that the defence had failed to make a link between Hamid and the drugs in P11.

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[17] Whilst it is true that the learned trial judge had not specifically made a ruling on IDD19, IDD20, IDD22, IDD23, IDD24 and IDD25, we find that the learned trial judge had so indicated that he did not accept these documents as evidence when he alluded to them (at p 186 of the appeal record Vol 3) as follows:

> Pihak pembelaan berhujah bahawa melalui keterangan saksi-saksi pembelaan dan exh D21, D18, IDD19, IDD20, IDD22, IDD23, IDD24 and IDD25 menunjukkan bahawa:
>
> (a) Hamid Rahanham benar-benar wujud; dan
>
> (b) Berdasarkan rekod polis yang disimpan oleh pihak polis Iran, Hamid telah ditahan kerana cubaan menyeludup dadah di Lapangan Terbang Iran pada 5-06-2009. Walaubagaimanapun, keterangan-keterangan yang dibawa oleh pihak pembelaan gagal untuk mengaitkan kewujudan Hamid ini dengan dadah yang dibawa di dalamPH ...

[18] The question then arose whether this court ought to look at these documents and admitted them as exhibits on the strength of learned appellant's counsel's arguments that they ought to be admitted as:

(a) these documents are public documents;

(b) it would cause unreasonable delay to call the maker of these documents; and

(c) all these documents are original documents.

Reference was made to the Supreme Court case of *Ng Yiu Kwok And Ors v Public Prosecutor* [1989] 3 MLJ 166.

[19] The learned deputy submitted that the translated version of these documents had no proper authentication that they were proper documents from the police of Iran. As these documents were tendered during trial, the prosecution was not able to verify them. That being the case, the maker of the translated documents and of these documents should have been called as witnesses. The defence's 'effort' to call them was not enough.

[20] After scrutinising these documents, we agreed with the learned deputy that these documents should not be admitted as exhibits of the court as we were not satisfied with the explanation given by the appellant that calling the makers of these documents would unreasonably delay the trial. At this juncture we noted that learned appellant's counsel had abandoned his submission in regard to IDD24 and IDD25 and had subsequently only dealt with IDD22 and IDD23. We therefore took the view that the appellant only wished for this court to rule on IDD22 and IDD23. We made the following observations with regard to these two documents:

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IDD22

(a) it is a police report regarding a person named 'Hamidreza Rahanjam', ID. Card No 263, passport No 15548208 who was detained by the Iranian police on suspicion of drug related offence on 5.6.2009. The letter head of the translation is that of 'Mohsen Abbasi', 'Official English Translator'. The caption of the report is 'Report of Discovering Drugs'. Nowhere at the head of the translation is it stated that it is a police report of any department of the police (see page 281, A.R). Towards the end of the translation the following is stated :

Signed by guard of terminal, 2nd Lieutenant Shahbanifar

The copy confirms to the original.

3rd branch of Inspection Department of Public & Revolutionary Prosecution Office of Tehran, Dist. 9 Signed for Colonel Hassan Shabanian, Head of Police of Imam Khomeini Airport.

The chop of the translator was affixed below this statement. Another chop was affixed below the translator's chop as follows:

Consular Section of the Embassy of the Islamic Republic of Iran in Kuala Lumpur Hereby certifies the authenticity of the seal and signature of Ministry of Foreign Affairs I.R. Iran marked herein by - (X)- Regardless of the content No 770 Date 14FEB2012.

(b) the date of the translation is stated as 'Dec 2011', but nowhere in the body of the translation is the date of the report made stated;

(c) comparing the translation with the 'original' document, we could not find any discernible letter head of the said Inspection Department of Public & Revolutionary Prosecution Office of Tehran, Dist. 9;

(d) the chop of the 'Consular Section of the Embassy of the Islamic Republic of Iran' merely certified to the authenticity of the seal and signature of the Ministry of Foreign Affairs I.R. Iran' which is not the subject matter of the report at hand at all;

(e) there are several other chops appearing on page 282 A.R (the translation) which are not legible;

(f) the report is on the person called 'Hamidreza Rahanjam' whose name is not the same as the name of the appellant's 'friend', even though learned counsel wished the Court to assume that the said name refer to the same person without more;

IDD23

(g) it is another police report regarding a person named 'Hamidreza Rahanjam', ID Card No 263, passport No 15548208. This time the translation of this document (on page 286, A.R.) is entitled 'Minute of Discovering And Weighting Drugs'. Again, the letter head of the

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translation is that of 'Mohsan Abbasi', Official English Translator'. Nowhere at the head of the translation is it stated that it is a police report of any department of the police. The same statement, with additional sentences 'Signed by witnesses Signed by the charged person, Hamidreza Rahanjam' and chops as appearing at the end of the translation in IDD22 appear in IDD23;

(h) we made the same observations in paragraphs 20.2, 20.3, 20.4, 20.5 and 20.6 above in respect of IDD22 as applicable to IDD23 as well.

[21] The authenticity of the original IDD22 and IDD23 as well as the translations of them were very much in doubt and in the face of no witnesses were called to prove their authenticity, we ruled that IDD22 and IDD23 cannot be admitted as exhibits of the court. In case learned counsel had also wished us to consider admitting IDD19, IDD20 as exhibits, these documents too suffer from similar adverse observations made by us and we also reject admitting them as exhibits of the court. The facts in *Ng Yin Kwok*'s case is distinguished from this case. In that case, the Supreme Court allowed the admission of several documents 'where the documents were prepared in the course of business and the makers were outside the jurisdiction who refused or were unwilling to come to this country' and 'there was some evidence to show that the makers' attendance could not be procured without delay or expense which the court considered unreasonable under the circumstances' (p 169 para B, C, right). In this case before us, all that learned counsel could tell us was that the makers of these documents could not be called to testify because they were unavailable at the date of trial, even the official from the Iranian Embassy in Kuala Lumpur.

[22] It was further submitted that the learned trial judge had also failed to consider the cautioned statement of the appellant. Reference was made to *Prasit Punyang v Public Prosecutor* [2014] 4 MLJ 282 (Court of Appeal No R-05–252–09 of 2011) where Azahar Mohamad JCA had ruled that s 182A of the Criminal Procedure Code ('CPC') requires it to be considered:

> [8] On the facts of the present case, we find there is merit in the contention of learned counsel for the appellant. In accordance with the provisions of s 182A(1) of the Criminal Procedure Code, it is the bounden duty of the learned JC, at the conclusion of the trial, to consider all the evidence adduced before him and shall decide whether the prosecution has proved its case beyond reasonable doubt. The Legislature has advisedly used the term 'all the evidence'. The emphasis must be on the word 'all'. In the context of the present case, the cautioned statement tendered by the appellant is one of the evidence which the learned JC should take into consideration in order to make a finding whether or not the prosecution has proved its case beyond reasonable doubt ...
>
> [11] The learned JC must consider carefully whether the cautioned statement is capable of raising a reasonable doubt on the prosecution case. The appellant's cautioned statement was recorded a day after the arrest of the appellant. It is

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> important, therefore, to point out that the appellant had mentioned the basic facts of his defence at a very early stage of the police investigation against him. It follows from this that the defence of the appellant in the present case was not something that was sprung for the first time in the defence case ... The impact of the totality of the cautioned statement on the prosecution case or innocence of the appellant has to be kept in mind in coming to the conclusion as to the guilt of the appellant ...

[23] We find the learned trial judge did make specific reference to the appellant's cautioned statement (D17) on pp 185 and 186 of the appeal record. He further made specific reference to the appellant's story of having a friend named Hamid Rahanjam, whom the appellant knew about two years before he was caught by the police in Malaysia and how this Hamid had persuaded the appellant to carry the luggage bag P11 for him (Hamid) to Malaysia (see pp 182–184 of the appeal record). We were therefore of the view that there was no misdirection by the learned trial judge. In any event, there was nothing further that the cautioned statement could have added to the appellant's defence which was not taken into account by the learned trial judge. Just because the appellant had mentioned about Hamid's role in the cautioned statement, which was made five days after the appellant was arrested, we were of the view that it was not incumbent upon the prosecution to investigate further on the veracity of the existence of Hamid when the appellant had failed to give to the police a clear description/identification of Hamid. The investigating officer SP4 had this to say about the matter during re-examination (p 95 of the appeal record):

> S: Tadi kamu telah dirujuk kepada D17. Dan kamu telah mengesahkan bahawa OKT ada menyebut tentang seorang bernama Hamid Rahanjam di dalam dokumen tersebut. Ada kamu buat siasatan berkaitan kewujudan Hamid Rahanjam?
>
> J: OKT telah memberi maklumat yang kabur iaitu maklumat yang tidak lengkap untuk menyiasat penama yang diberikan.
>
> S: Apa maksud kamu dengan maklumat kabur atau tidak lengkap?
>
> J: OKT hanya memberikan nama Hamid Rahanjam sahaja dan tidak ada memberikan butiran pengenalan lain penama yang disebut itu.

In the circumstances we were of the view that the principle in *Alcontara a/l Ambross Anthony v Public Prosecutor* [1996] 1 MLJ 209; [1996] 1 CLJ 705 (FC) as cited by the appellant's counsel, that the onus was on the prosecution to check on whether the appellant's version of the facts as they appeared in his cautioned statement and to which was referred was true or false (at p 719, paras G–H), did not apply here. In a later case of *Teng Howe Sing v Public Prosecutor* [2009] 3 MLJ 46; [2009] 3 CLJ 733, the Federal Court held, at p 750 para C–E:

> ... the learned trial judge was correct to conclude that the appellant had two opportunities to provide information about 'Ho Seng', ie, at the time of his arrest

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> and five days later during recording of his cautioned statement but he failed to do so. We are therefore of the view that in the circumstances, the appellant's failure to provide relevant information about 'Ho Seng' for the police to carry out a thorough investigation into the probability of his defence, entitled the learned trial judge to disbelieve him.
>
> which supported our views on this issue.

[24] Another aspect of the appellant's defence which, it was contended by the appellant, had not been taken into consideration by the learned trial judge was:

(a) that the silver Echolac luggage bag P11 and its contents belonged to Hamid;

(b) whilst the blue Forecast bag P14 and its contents belonged to the appellant; and

(c) that the appellant had a hand carry bag P12 with him.

According to the appellant, the version of the prosecution that the contents of both luggage bags as reflected in the search list P8 and the evidence of SP3 were not correct as the contents of both the bags had been mixed up when the bags were searched at the narcotics office. The appellant disputed the prosecution's version that his shirt (P11(1) — item 5 on the search list), his Dolce & Garbana jeans (P11(4) — item 6 on the search list) and one book in Jawi script which had his late father's photograph (P11(6) — item 8 on the search list) were in the silver bag P11. According to the appellant these items were in P11 because of the mixed up of some of the contents of both the bags. The appellant had signed the search list even though he did not understand its contents which was written in the national language and not translated to him. It was submitted that the appellant's version was therefore probable and believable.

[25] The learned deputy drew our attention to the evidence of SP3 (who was then the supervising detective from the Narcotic Criminal Investigation Department at KLIA) during examination-in-chief where he stated as follows (at pp 30–31 of the appeal record):

> S: Selepas itu apa kamu buat?
>
> J: Saya arahkan Koperal Rosli dan Koperal Ghazali bantu saya mulakan pemeriksaan terhadap 2 beg besar. Yang pertama beg berwarna biru. Semua barang-barang dalam beg dikeluarkan dan saya dapati dalam beg bersebut ada beberapa barang hiasan, beberapa helai pakaian, kasut dan barang-barang peribadi OKT.
>
> S: Selepas itu?
>
> J: Saya periksa beg berwarna silver, beg kedua. Saya arahkan OKT keluarkan barang-barangnya daripada beg dan kosongkan beg sebab saya

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tengok di dalamnya ada barang hiasan dan sehelai baju dan seluar. Saya periksa di bahagian bawah beg, apabila saya tekan saya terasa ada benjolan dan ada satu bunyi berderap. Bunyi macam 'krup'. la mendatangkan curiga kepada saya.

SP3's said testimony was consistent with the contents of the search list P8 where the appellant's shirt (P11(1)) was noted at item 5, his Dolce & Garbana jeans (P11(4)) was noted at item 6 and 4 books in Jawi script were noted in item 8. The appellant had admitted signing P8, albeit not understanding its contents. During cross-examination, SP3 answered appellant's counsel's question firmly that he had certainly ensured the contents of the three bags did not get mixed up with each other (p 70 of the appeal record).

[26] The learned trial judge, however, was not impressed by the appellant's defence as a whole and found the appellant had failed to connect Hamid with the drugs carried in P11. The learned trial judge found that P11 was at all material times in the possession of the appellant when he was arrested. As there was no misdirection by the learned trial judge we see no reason to disturb the findings of the learned trial judge.

[27] Having considered the evidence presented in totality, we agreed with the learned trial judge that the prosecution had proven its case beyond reasonable doubt. We find the learned trial judge had adequately considered the defence case and we find there were no merits in the appeal. We were also satisfied that the conviction of the appellant is safe. We unanimously dismissed the appeal and affirmed the conviction and sentence imposed by the learned trial judge.

Appeal dismissed.

Reported by Afiq Mohamad Noor